

Marlies Casier

Contesting the 'Truth' of Turkey's Human Rights Situation: State-Association Interactions in and outside the Southeast

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Contesting the 'Truth' of Turkey's Human Rights Situation: State-Association Interactions in and outside the Southeast

Without public pressure it is impossible to achieve change. The state is aware of this and thus marginalizes human rights organizations. It turns them into targets. If a soldier dies, the high ranked military officers say 'Where are the human rights defenders now?' They try to tell the public that the human rights associations are merely interested in the lives of the 'terrorists' and not in the lives of their children (Ayhan Bilgen, former president of Mazlum-Der, personal interview, 14 January 2009, Ankara).

- 1 Among the changes that took place in Turkey in the first decade of the 21st century was the way some branches of the state engaged the question of human rights.¹ In good part due to pressure from the European Union – specifically, in order to gain formal acceptance of Turkey's candidacy and move towards meeting the political conditions of the Copenhagen criteria for accession – governments in Ankara enacted a series of legal reforms aimed at providing 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.'²
- 2 Long critical of Turkey's human rights record, particularly in the southeastern part of the country, European institutions have actively supported the Turkish government in its reform drive, stressing the need to develop working relations with civil society. And indeed, the government did consult with human rights associations during the legislative process in the first half of the decade. These included international associations such as Human Rights Watch and national ones such as the Human Rights Foundation of Turkey [*Türkiye İnsan Hakları Vakfı*, or TİHV], and the Human Rights Association [*İnsan Hakları Derneği*, or İHD].³ There thus appeared to be a window of opportunity for cooperation between at least some branches of the state and the country's human rights associations, and a chance for the deepening and enhancement of the role of civil society in national affairs. Ideally, this would both assist the development and protection of basic liberties, including those newly won, and enable violations to be addressed, in particular those related to Turkey's Kurdish question, and the armed conflict that resulted from it.⁴
- 3 However, this process has not resulted in a more cooperative relationship between the country's human rights associations and relevant state institutions. On the contrary, the process seems to be producing a dual system comprised of mutually antagonistic actors: the new state-centric institutional bodies, on the one hand, and the established domestic human rights associations, on the other. Instead of working in cooperation with established human rights associations, the newly developing state institutional structures appear to be challenging them for authority over the 'truth' concerning human rights in Turkey, especially regarding the Kurdish question. The majority of severe human rights violations inside Turkey have been and are still related to the unresolved Kurdish issue and the ongoing armed conflict with the Kurdistan Workers Party (PKK).⁵ However, the new state-centric institutional bodies that are being created are thus far unwilling to seriously address these violations, instead prioritizing the presentation of a positive image of Turkey's human rights reforms. These government institutions are thus developing parallel to and in competition with existing human rights associations.
- 4 This paper examines these dynamics. First, I examine the roots of the current human rights-institutionalization process. I link this process primarily to pressure from the European Union:

when EU policies created new political capital for human rights, the Turkish government and state officials began to tackle the question of human rights violations more vigorously and, from 2001 on, enact serious legal reforms (Eralp 2006; Arat 2007). The Turkish state consequently had to start to engage civil society actors in the development of its new public policy. In the area of human rights, this meant that state institutions now had to work closely with exactly those associations that constituted some of their fiercest critics, some of which had been considered as actually undermining the state's policies, if not thought of as straightforwardly advocating separatism.

5 Second, I examine the nature and workings of a new government human rights body: the Human Rights Council of Turkey, which operates mainly as a co-operative arrangement between state officials (the Human Rights President at the national level, and the provincial governorships in the provincial and sub-provincial boards) and state-friendly NGOs. An examination of this council and the way it works suggests that the government attempted to extricate itself from the predicament of having to work with civil society actors it viewed as a threat by incorporating only those actors that did not challenge the state's reproduction of itself or the meaning people are expected attach to it (Migdal 2001: 150). In particular, those NGOs perceived as contributing to the Kurdish nationalist movement and considered part of the DTP-led (and PKK inspired) alternative state-building project in the southeastern municipalities are largely excluded from the state-centric institutionalization process.

6 Third, I look at the balance of power between the government-sponsored human rights institutions and what we may think of as 'traditional' human rights associations. On the one hand, the former authority of the established human rights associations is to some degree eroding due to shifts in patterns of relations between these associations and EU institutions, which now rely less on traditional human rights associations due to the increasing capacity of the European institutions inside Turkey. In addition, the politicization⁶ of the established human rights associations has become a matter of concern for the European Commission.

7 On the other hand, a significant part of the social-political space created over the years by domestic human rights associations remains intact, and the government's efforts at a human rights 'take-over' is actively contested. And, in fact, the established human rights associations still possess a number of advantages over the new state institutions in their ability to set the human rights agenda and determine the discourse for civil liberties and justice in the southeast.

8 Although this particular paper looks at national-level political dynamics, it offers a useful window onto studying some of the ways state-society relations in the southeast have shaped political dynamics throughout the country. EU pressure to have Turkey conform to European human rights standards was instigated in good part by the pre-1999 realities of the southeast, where the state's counter-guerilla warfare had been accompanied by many human rights violations. This EU attention – and the government's efforts to 'officialize' human rights processes in Turkey – was one response to the activities and pressure of domestic and international human rights organizations and Kurdish diaspora activists who had largely focused on these violations that were taking place in Kurdish-majority provinces of the southeast. All these actors sought to link the Kurdish issue and human rights frames, and to achieve international political and judicial recognition for their grievances and claims. This same linkage, however, came with great complications for the broader human rights reforms and institutionalization process.

I. The roots of the current institutionalization process

9 Understanding the current institutional challenge and its effects on human rights associations in Turkey requires a brief summary of Turkey's human rights position and policy. Historically, Turkey was among the 48 countries that voted for and signed the Universal Declaration of Human Rights adopted by the United Nations General Assembly in Paris, 1948; it is

recognized as among the 12 founder-members of the Council of Europe in 1949, and thus one of the 14 signatory countries to the Convention for the Protection of Human Rights and Fundamental Freedoms in 1950, which it ratified four years later. However, 'human rights' as such did not enter the country's political agenda before the 1980s, when systemic repression and human rights violations including torture and extrajudicial killings began to attract domestic and international attention.

- 10 The Turkish state's problem with human rights during the post-1980 period has to be understood specifically in the context of the violent conflict with the PKK in the southeast,⁷ but also, and more generally, in light of the existence of a 'security regime' based upon intimate relations between the political institutions and the institutions responsible for security related issues, and the meta-ideology they share. In this ideology national security is the central concept that justifies interventions in all possible domains of social activities (Dorronsoro 2005: 22-23; Sakallioğlu-Cizre 2003; Cizre 2008). The state-centric conceptualization of domestic sovereignty in Turkey is constructed around a hegemonic nationalist mythology of existential threat, one perceived as ever present since the war of independence, coming both from without and within, and actually based on a still insecure sense of identity (Kentel forthcoming). Tellingly, it presumes the citizens' first duty as to safeguard the integrity of the republic, which is at odds with the more inclusive and pluralistic culture of democratic tolerance promoted by the European Union through the 1950 European Convention on Human Rights.⁸ The emphasis in the EU approach lies on the responsibility of the state to protect the rights of its individual citizens, instead of vice versa, as is the case with the cultural ideology of Kemalist Turkey (Eralp 2006). As explained in the analysis of the making of Turkish 'state-centric modernity' (Keyman & İçduygu 2005: 5):

... while giving the masses political rights, [the Kemalist elite] demanded at the same time that they accord normative primacy to the national interest over individual freedoms, to duties over rights, and to state sovereignty over individual autonomy. Thus, the making of the modern Turkey involved the transformation of masses into citizens, but prevented the language of rights from entering into the process of the construction of secular national identity (Keyman & İçduygu 2005: 6).

- 11 Nevertheless, Turkey's disturbing human rights record came increasingly under the scrutiny of international human rights associations following the 1980 coup, (e.g. Cizre 2001) and from 1986 onward this was reinforced by the first homegrown Human Rights Organization, the *İnsan Hakları Derneği* (İHD), parent organization to TİHV. Established in Ankara, İHD originated from the engagement of leftist professionals and intellectuals and the relatives of the political activists imprisoned during and following the 1980-1983 military rule (Çalı 2007; Türkmen 2003). İHD publicized the plight and conditions of the still thousands of political prisoners to the outside world and was in contact with Amnesty International, which was monitoring the conditions of the detention of the political prisoners and publicly advocating their cause.
- 12 During the mid- and late-1980s the effects of military rule were still very much in evidence – there were no trade unions or leftist political parties left at the time of İHD's founding, for example – and the emerging human rights associations thus came to occupy an anti-authoritarian space offering one of the few vehicles through which people could engage in criticism of the official state ideology and policies (Çalı 2007; Türkmen 2003). Human rights defenders in Turkey therefore easily came to be seen as leftist-communists and therefore a threat to the state, especially in an environment in which the Turkish military was promoting the Turkish-Islamic synthesis as a buffer to socialist movements and ideas.
- 13 From the beginning of the 1990s onwards the Kurdish question came to dominate the agenda of the human rights associations (Emir Ali Türkmen, personal interview, 17 January 2009),⁹ with the PKK replacing the left as the greatest perceived threat to the integrity and unity

of the Turkish state.¹⁰ New national human rights associations were set up such as TİHV, a foundation that specialized in the rehabilitation of victims of torture, and the Organisation of Human Rights and Solidarity for Oppressed People *İnsan Hakları ve Mazlumlar İçin Dayanışma Derneği* (Mazlum-Der), known to have a more Islamic-inspired approach. The new associations obviously focused on abuses in the southeast, an emphasis that continues to this day.¹¹ Together with international human rights associations, including those related to the Kurdish diaspora in Europe (e.g. the London-based Kurdish Human Rights Project, KHRP, founded in 1992),¹² groups like İHD and TİHV have played an important role in the recording and publication of human rights violations in the country (see e.g. Watts 2004; Adamson 2001).¹³

14 The voices of these associations came to be heard by civil society associations and politicians in Europe, especially during the 1990s when the number of serious human rights violations in the Kurdish southeastern provinces of Turkey sky-rocketed. Consequently human rights turned into a matter of concern with regard to Turkey's applications for membership to the European Union. In 1989 Turkey's failure to respect the human rights of its citizens was amongst the reasons cited for the rejection of its application (Doc. SEC (89) 2290); in 1996 Turkey's human rights record was a reason given for the European Parliament's objection to Turkey's entry into the EU Customs Union, and similarly, at the Luxemburg Summit of 1997, the poor human rights situation played a significant role in Turkey's rejection as a candidate. Since the green light for its candidacy was given in 1999, and for the negotiations in 2005, respect for human rights has been addressed continuously in the relations between Turkey and the European Union (Doc. 2008/157/EC).¹⁴

15 Until the end of the 1990s the nationally based human rights associations, in particular İHD and TİHV, held a kind of exclusivity over the registration, publication and prosecution of human rights violations in Turkey. These particularly concerned violations suffered by Kurdish political activists and their families during the violent phases of the armed conflict at the end of the 1980s through the mid-1990s. İHD quickly became the address for international human rights associations like Amnesty International and Human Rights Watch for information on developments in the Kurdish inhabited provinces under the State of Emergency Law, *Olağanüstü Hal* (OHAL). The İHD branch at Diyarbakır operated as the central branch for the southeastern predominantly Kurdish provinces, with human rights violations in the region being reported there and then passed on to Ankara or (directly) to international associations (Nazmi Gür, former president of İHD Van Branch and former member of İHD Diyarbakır, personal interview, 15 January 2009, Ankara). From 1992 the branch of Diyarbakır started to cooperate extensively with KHRP to bring cases before the European Court of Human Rights (ECHR) in Strasbourg.

16 Human rights activism employed through the ECHR played an important role in the recent legal development of fundamental freedoms. Turkey finally recognized the right of individual petition to the ECHR in 1987, the year that saw – in addition to Turkey's formal application to the EU – the instatement of OHAL, which 'initiated a period of grave human rights violations committed by security forces against Kurdish civilians, leading to a rapid increase in the number of petitions filed with the ECHR' and as a result of which 'it was initially for Kurds that the European human rights law offered an alternative arena for rights-based litigation' (Kurban *et al.* 2008: 3).¹⁵

17 In total, Turkey was found to have violated human rights in almost 1,700 cases brought before the European Court of Human Rights during the decade 1999-2008 (with a further 200 settled out of court, combining to account for all but 16 of the judgments made) (ECHR 2009a: 139).¹⁶ The judgments found against Turkey directly affected the laws and practices inside the country as the jurisprudence of the ECHR had to be incorporated into the national laws in order to prevent similar violations in the future (Smith 2008). The ECHR therefore was instrumental in

the reform of Turkish legal system, leading to reforms in pre-trial detention, trial procedures, freedom of expression, and freedom of assembly and association (see also Adamson 2001; Watts 2004).

- 18 Turkish state authorities for the most part denied accusations of human rights abuses until the middle of the 1990s. Typically, the government would accuse its foreign critics of illegitimate involvement in internal affairs and support of separatism (see e.g. Çalı 2007: 222). Human rights defenders in the country faced prosecution, imprisonment, torture, and death.¹⁷
- 19 From the EU Customs Union Protocol in 1995-1996 onwards, however, the state engaged in 'tactical concessions' (Cizre 2001), entering into a dialogue with internal and international critics about various accusations. These concessions were instrumental and strategic, in order to gain military and economic support. Thus, while certain abuses were recognized, they were presented as the aberrant behavior of particular individuals rather than part of a systematic policy (Cizre 2001: 68). In 1997, under Refah deputy Haşim Haşimi, the parliamentary Human Rights Commission wrote the first report that openly criticized the consequences of the counter-insurgency measures in the Kurdish provinces, bringing many human rights violations to light. As Haşimi stated while reading the minutes of his speech in the Turkish General Assembly of 2nd of June 1998:

There are natural catastrophes that you, as a state, cannot do anything about, but there are human catastrophes that you as a state can do something about... Whose power has evacuated the people? Thousands of people fled to the outskirts of the city and the gecekondu [shantytowns]. Who has forced them to live this life? Who has brought them to [own nothing but] a piece of bread? (Haşim Haşimi, personal interview, 20 September 2007, Diyarbakır).

- 20 It was when the politics of denial ended after the 1990s and important legal reforms undertaken that the government decided to establish an institutional human rights body in order to integrate the protection of human rights into the state administration. By 2004, provincial and sub-provincial human rights boards had been established under what came to be called the Human Rights Presidency of Turkey.

II. The particularities of the new institutional body

There is one positive effect of the [new] institutions: the government is using the word *human rights* all the time and the symbols of human rights are all over the walls of their buildings. (Hüsnü Öndül, personal interview, January 2009, Ankara).

- 21 Following its victory in the November 2002 election, the AK Party (AKP) government not only accelerated the pace of democratization but also initiated a process aimed at institutionalizing the protection of human rights in the state administration. Concretely, the government organized an organizational and legislative establishment consisting of a national structure for dealing with violations. This was made up of local and provincial boards [*kurular*] headed by the provincial governors and coordinated by a central government department; the Human Rights Presidency of Turkey, answerable to the prime ministry [*Başbakanlık İnsan Hakları Başkanlığı*], under which subsumed various other bodies, such as a think tank known as the human rights advisory board; and the 'Human Rights Council of Turkey' [*Türkiye İnsan Hakları Kurumu*].¹⁸
- 22 At first glance there were reasons for optimism about the new human rights institutional structure. Made up of local elected representatives, academics, lawyers, politicians, professional bodies, journalists, NGOs, and trade unions, the boards were tasked with monitoring human rights-related legislative reforms and their implementation in the country, and instructed to investigate complaints about human rights abuses filed by citizens and forward their findings to the prosecutor. A Human Rights Advisory Board was established to provide a platform for consultation and information exchange between academics, NGOs and other civil society actors dealing with human rights.¹⁹ Thus, an integration of (local) civil

society actors and formalized recognition of civilian democratic oversight seemed central in the new human rights policy in Turkey.

- 23 However, those NGOs that have openly criticized state practices and its ideological underpinnings have been excluded from – and excluded themselves from – the institutionalization process. To give but one example of the skepticism that abounds amongst Turkey's human rights defenders, the TİHV-General Secretary testified:

There is no political will to enhance the cooperation between the civil society and the state authorities. What they do is no more than window-dressing. For example, we get lots of invitations for meetings. Lately, after a meeting of Babacan [Turkey's Minister of Foreign Affairs and chief EU-negotiator for Turkey until January 2009] with many NGOs, the NGOs had to leave the premises when Babacan gave his briefing to the press (Metin Bakalçı, personal interview, 22 January 2009, Ankara).

- 24 The human rights boards from the start suffered a legitimacy problem in the eyes of national and international human rights associations. First of all, the boards were organized under the prime minister and run by the provincial governors. This was not in line with the Paris Principles which sets out the need for national human rights institutions to be independent.²⁰ Now the same provincial governors representing the state and in charge of the police were charged with investigating violations of human rights perpetrated by the state and its security forces. Furthermore, in the whole process of institutionalization and protection of human rights and the drafting of the laws that were needed for its regulation, the traditional human rights associations were not consulted, and have complained that they are excluded from the negotiations.

- 25 At the same time, however, the established human rights associations have always taken an anti-establishment position and have been hesitant to cooperate with local officials, even when considering them necessary for the fulfillment of their aims (Tocci & Kaliber Luiss 2008). Consequently, these associations have also refused to take part in the boards. They have criticized the ways in which the government tried to introduce the new human rights bodies, and in May 2009 TİHV and the four associations affiliated with the Human Rights Joint Platform, or *İnsan Hakları Ortak Platformu*, known as İHOP, signed a strongly worded rejection of the latest draft law on a reformed Human Rights Council. In addition to stating their opposition to being included in a process of 'anti-democratic implementation, which can be considered also as a human rights violation', they also criticized the composition of the boards as failing to meet the terms set by the ministry and as being, ultimately, 'problematic and functionless.'²¹

- 26 Initially, some of the established human rights associations such as TİHV did take part in the Human Rights Advisory Board that was established, but that involvement ended following its first report (since which the Advisory Board has not been operative). Tellingly, that first report dealt indirectly with the Kurdish problem, in that it attempted to tackle a practical political problem concerning the vocabulary of identity. The Turkish word *Türk* has a double meaning, referring both to ethnicity and nationality, which is obviously problematic for politically sensitized Kurds in particular, who, given their raised nationalist consciousness, may identify themselves as Turkish by citizenship but not by ethnicity. In order to distinguish the two, and move away from prejudicial language, the report prepared by professors İbrahim Kaboğlu and Baskın Oran used the concept of '*Türkiyelilik*', which means 'being from Turkey.' However, the academics were charged with 'denigrating Turkishness' and inciting people to enmity and hatred under Articles 301 and 216 of the Turkish Penal Code. This was followed by the dismissal of fourteen members of the board, after which the chairman and many other intellectuals resigned.²²

- 27 A closer look at the NGOs participating in the human rights boards reveals the nature of the new institutional structure. Membership of NGOs on the boards is upon the invitation

of the provincial governors, who, as representatives of the state, could be expected to be loyal to the official ideology. And indeed, the NGO representation found on the Human Rights boards does consist primarily of members of NGOs working within the confines of the state's ideology, including some that are actively engaged in its promotion such as the *Atatürk Düşünce Derneği* [ADD, Atatürk Thought Association], *Türk Dünyası İnsan Hakları Derneği* [Turkish World Human Rights Foundation], *Türk Ocakları Derneği* [Turkish Hearths Foundation], *Şehit Aileleri Derneği* [Association for the Families of Martyred Soldiers] and *Türk Anneleri Derneği* [Association of Turkish Mothers].²³ They also tend to be less than focused on human rights, which makes them questionable choices for the Human Rights boards. Indeed, a UN Special Representative in 2004 judged the selection of NGOs for participation in the Human Rights boards to be based on 'political affiliation' and 'other extraneous considerations' (Jilani 2005).

28 The characteristics of the NGOs that are members of the Human Rights boards have particular implications for the protection and promotion of human rights as related to the Kurdish question. The institutional bias of some of these organizations in respect to this issue and the stance they could be expected to take on the boards is quite apparent. In the case of the more overtly nationalist organizations – like *Atatürk Düşünce Derneği*, *Türk Dünyası İnsan Hakları Derneği*, and *Türk Ocakları* – and in the case of *Şehit Aileleri Derneği*, the list of soldiers lost ('martyrs') and their date and place of death, i.e. overwhelmingly in the southeast during the 1990s figures on their websites.²⁴

29 These associations portray a suspicious, hostile and sometimes demonized image of Kurdish and human rights associations. They tend to be suspicious of the motives and aims of human rights groups that address the Kurdish question (and, by extension, Kurdish associations in general), considering them to be appropriating the language of rights in the pursuit of a hidden agenda that could endanger the national unity and security, and even as operating merely as legal representatives of the PKK (Tocci & Kaliber 2008: 13). The idea that İHD is biased and defends the rights and freedoms of Kurds, including terrorists, but not the primary right to life of murdered Turkish soldiers and their families is also widespread. Historically and ideologically, these organizations have upheld a civic or assimilationist approach to the Kurdish question, prioritizing individual rights and denying the existence of a Kurdish collectivity legitimately demanding collective rights (ibid.: 24).

30 Predictably perhaps, the attitude of distrust found among the member NGOs of the human rights boards is shared by the president of the human rights presidency coordinating the human rights boards, Professor Hasan Fendoğlu, who expresses the view that the human rights associations failed to join the boards because of their 'unwillingness', as they would think of the boards as 'competition', and suggests that they are not really representative of the nation as a whole but, on the contrary, part of Kurdish nationalist politics:

Human rights organizations here are different than in Europe because in Europe NGOs support the state. In Turkey, however, certain NGOs want to separate from the state. The DTP took 5 percent of the votes of the Turkish people. They are small but their voice is strong, [while] the majority is big but has not got a [national] human rights organization. Concerning human rights, it is said that they are communist and Turkish people have not established a human rights organization. In the future we might have new NGOs. (Hasan Fendoğlu, personal interview, 22 January 2009, Ankara).²⁵

31 The absence of the established domestic human rights associations in the new institutions weakens Turkey's human rights institutionalization process. These associations have developed expertise in the documentation and publication of human rights violations and the assistance of victims over the years. İHD and Mazlum-Der have their own networks of lawyers with whom they work. Since the beginning of the 1990s these associations have also supported victims by taking their cases to Strasbourg, supported by KHRP, which has provided legal

training to the human rights defenders and lawyers working for the associations (Kerim Yıldız, personal interview, January 2008, London). The human rights boards, on the other hand, suffer from a lack of expertise (as acknowledged in their own 2007 report and in many of the interviews of the author). While the expertise build up by the domestic organizations remains under-utilized, the boards have tried to develop their own capacity building with financial support from the European Union and some of its member states.

32 The boards' data collection and public reporting seems to be a relative strength of the Human Rights Presidency, which has published fairly full sets of figures.²⁶ According to the report, the statistics should demonstrate the implementation of reform, showing progress or failure concerning human rights. However, the report offers a clearly biased logic in the relative accounting for desirable and undesirable trends. For example, the report argues that an increase in the reported number of formal complaints related to ill treatment while in custody can be accounted for as indicating a rise in public awareness of the boards, rather than an actual increase in the number of people suffering ill treatment at the hands of security forces. However, other data showing a decrease in complaints (e.g. related to torture and freedom of expression), is taken as evidence that the problems in these areas have decreased and the measures taken (to prevent torture) are proving successful (HR 2007: 20, 23).

33 More generally, the number of citizen complaints – less than 5,000 formal complaints for the whole four-year period – appears rather low. For instance, it is less than half the number of cases filed against Turkey pending at the ECHR (see note 17). The greatest numbers of the formal complaints concern alleged violations regarding the right to health and property (totaling almost 20 percent of the complaints). The violations for which Turkey received the most international and domestic attention are related to rights concerning freedom of thought and expression, freedom of association, and freedom of assembly and demonstration, and these all ranked in the bottom third of the thirty rights categories listed by the Presidency data presentation. The words of the Human Rights President himself also reflect the need to appease the criticisms of the outsiders, while at the same time they reflect the ongoing 'security regime', as he tried to reassure the author:

In Turkey, there is freedom of expression. You can criticize the army, the president, the government and the parliament, but what you cannot do is insult them... In the last six months our Minister of Justice gave permission to prosecute in 70 cases related with article 301 and he was right to do so. I know that, because I've monitored these cases and they were rightfully prosecuted. Today freedom of expression has improved. There is only some homework left to be done (Hasan Fendoğlu, personal interview, 22 January 2009, Ankara).

34 Clearly, the new institutional bodies and the traditional human rights associations have contesting claims as to the 'truth' of the nature and the number of human rights violations in today's Turkey. Whereas the Human Rights President and the Boards appear to downplay violations of the freedom of expression and the existence of torture, the traditional human rights associations such as İHD present strikingly different priorities and figures. Regarding torture, for example, the report of the Human Rights Presidency indicates for the year 2007 a total number of 29 cases of torture and 133 cases of ill treatment, totaling 162 (HR Report 2007: 16-17). İHD, on the other hand, reports 678 cases of torture and ill treatment for the year 2007 (İHD 2008), in one year outnumbering the 461 cases the human rights presidency attests for the whole period 2004-7. Similarly, with regards to freedom of expression the human rights presidency's report indicates a total of 5 cases for 2007 in which freedom of expression was violated (HR Report 2007: 16). İHD's report, on the other hand, states that in 2007, 190 court cases had been filed involving 1232 persons. The İHD report further finds that about 369 people were convicted in 2007 and given prison sentences and penal fines in cases deemed to be in violation of the freedom of expression (İHD 2008).²⁷

- 35 Finally, there is a lack of engagement among the Presidency and its boards with the Kurdish question. There are no geographical tables to show where applications were made (although there are figures showing the institutions held responsible for human rights violations).²⁸ Nor is there any discussion about the rights of ethnic and linguistic minorities, or about questions such as the need for dialogue and reconciliation in the light of the armed conflict. This is in stark contrast to the demands and proposals of the established human rights associations and think tanks. Given the current political climate and recent history, these omissions cannot be seen as inconsequential or accidental, but suggest an effort to redefine human rights in Turkey in a new and 'de-Kurdified' way.
- 36 An assessment of the resources of the traditional human rights associations on the one hand, and the Human Rights Presidency and its boards, on the other hand, also highlights the fact that the traditional associations and newly established boards, and, in particular, its member NGOs, constitute competing clusters of organizations. The human rights associations have expertise and a history of intensive cooperation with one another, and they are also embedded into transnational advocacy networks with international human rights associations. Additionally, the human rights associations have found a welcoming work environment at the local level, in particular in those municipalities in the southeast run by the DTP (see Watts, 2006; Gökalp 2007). At the national level, however, the domestic human rights associations have had problems accessing the mainstream media and establishing broader public support (beyond the support they enjoy in the Kurdish-majority southeast and among a small audience, generally the liberal intelligentsia, in the western part of the country). The human rights associations have also experienced difficulties accessing most of Turkey's parliamentary deputies and have been unable to directly affect governmental policies, despite (or because of) their indirect success, for example through the cases brought against Turkey in the ECHR.
- 37 Therefore, while the established human rights associations continue to function as advocates for the southeast and (other) minority interests outside the mainstream, nationalist discourse (i.e. Armenian, Christian, Romany, LGBT, etc.) at the national level, the Human Rights Presidency and its boards, as organs of the state, may be better positioned. In other words, a dual system with a dichotomous human rights discourse is developing. This affects relations with the European institutions and all of these entities' claims to speak with authority about the human rights situation inside the country, as illustrated in the following anecdote recalled by human rights lawyer and activist Hakan Ataman:

There is no positive dialogue. There is a dialogue [with the institutions] about things that do not pose a threat to the state, such as the rights of children and women. However, at the same time, an issue such as rape under custody is something that cannot be addressed... I attended a EU seminar on human rights and torture. During the workshop an enormous dispute burst out between state officials and human rights defenders. No solution was found and there was a total lack of dialogue (Hakan Ataman, Secretary General of the Human Rights Agenda Association, personal interview, 16 January 2009, Ankara).

III. Shifting patterns of relations between the EU and human rights associations

- 38 Established human rights associations' ability to control discourse and 'assert the truth' about the human rights situation in Turkey is being challenged not only due to internal developments but also due to changes in the patterns of relations between these associations and EU institutions. These changes also in turn affect internal developments, extending their impact and further squeezing the socio-political space the human rights associations have to work in. Two main changes can be noted, one related to the capacities and relative needs of the EU, and the other to EU perceptions of the human rights associations themselves.
- 39 First, EU institutions are now more capable of gathering information themselves within Turkey because of their increased capacity. Therefore they rely less on the information

provided by Turkey's established human rights associations. This increased information-gathering capacity was enhanced by the European Commission's establishment of its permanent delegation to Ankara, and through financial and organizational support provided to pro-democracy think-tanks and other institutions. These now provide information and services to the international agencies. Not only the traditional human rights associations but also international ones such as Amnesty International attest that while the information requested from them peaked in 2004-2006, the demand has now decreased. They attribute this to the extended expertise within the European Commission itself (Personal interview of the author with Jenny Vanderlinden, Turkey Coordinator for Amnesty International Belgium, February 2009).

40 Turkey's human rights' institutionalization process has also enjoyed extensive financial support from the EU. The development of the human rights presidency and its boards came with considerable financial and organizational support from the Council of Europe and other foreign donors, such as the British Foreign and Commonwealth Office, which invested in their own capacities in Turkey as a prospective member. Members of the boards received training; an international symposium was organized and a handbook developed for the board members. Additionally, some projects enjoyed assistance from the United Nations Development Program, UNDP. Linked to this, surely, traditional human rights associations have, by contrast, complained about the waning interest and financial support from European institutions for their activities. As an İHD member argued, 'Since 2000 the EU has been mostly depending on the official reports of the government' (Necat Taştan, personal interview, 17 January 2009).

41 Waning interest and support from Europe for the established human rights associations is not linked solely to the increasing number of alternative organizations and institutions with a presumed expertise on human rights affairs. Some EU representatives now seem to view human rights associations in Turkey more critically, faulting them for perceived structural problems and politicization. As the deputy head of the cabinet of the European Commission's Enlargement Commissioner Olli Rehn testified:

We cannot be sure about whether or not organizations are related to the PKK since we cannot check for each organization how they are being financed, therefore we base ourselves mostly upon the big international NGOs and their reports [in order to evaluate the reforms related to human rights in Turkey]. (Myriam Verger, deputy head of the cabinet of European Commission's Enlargement Commissioner Olli Rehn, personal interview, 2 July 2007, European Commission, Brussels).

42 The politicization of these associations has actually been a fact from the very beginning (Çalı 2007, interviews by the author) but only lately does this seem to have become a matter of concern for the members of the European Commission, rendering them skeptical of the data these associations provide and thus decreasing the legitimacy the associations had previously enjoyed. The diminished support for some of the human rights associations can be read from the financial support for human rights projects. Whereas İHD, for example, enjoyed considerable funding in the past, through the grants of the EC's European Instrument for Democracy and Human Rights (EIDHR), today neither the national headquarters nor the regional branches are receiving any funding.²⁹ Similarly the Association for Assistance and Solidarity with Migrants, Göç Edenler Yardımlaşma ve Dayanışma Derneği (GÖÇ-DER) and Mazlum-Der – which all received project funding from the EIDHR in 2005 – are no longer supported.³⁰

43 A number of factors may have contributed to this, not least the changing post 9/11 climate which saw the PKK entering US and European lists of terrorist groups and the raising of European consciousness regarding Turkish complaints about the freedoms allowed to Kurdish diaspora activism on the continent (e.g. the arrests of PKK cadres in France, Germany and

(most recently, in March 2009) Spain; and the many house searches of Kurdish activists in the United Kingdom). Another detrimental influence on the human rights cause seems to have been a perception of AKP legitimacy, noted as being the first majority government for a decade and democratic counterweight to the military and deep state. In addition, a more critical stance towards human rights associations is linked to the reduction in hostilities in the southeast (and its accompanying reduction in human rights violations) and the developing EU-Turkish relationship. Certainly, human rights defenders complain that they have been told by members of EU-delegations that 'while you want Turkey to become a member of the EU, at the same time you are amongst those who work against the accession of Turkey to the European Union' (TİHV Diyarbakir Branch member, personal interview, 29 September 2007). And:

When we narrated the contents of the reports by İHD to members of the European commission we constantly got the same reply: 'We can't believe it. Are you telling us there are two Turkey's?' ... Actually the message was: 'Don't do anything that might put the AKP government into a negative light' (Necat Taştan, personal interview, 17 January 2009).

During the meetings with EU-delegations I have noticed myself how uncomfortable they felt when we talked about the problems. I was told that I was too pessimistic, that I should not just focus on the negative things, that this would be in favor of the ones that are opposing Turkey's accession to the European Union, in Europe as well as in Turkey. But that is a wrong attitude. It shows that Turkey is in a comfortable position in the negotiations, as it is able to stay in control (Ayhan Bilgen, former President of Mazlum-Der, personal interview, 14 January 2009).

- 44 Until the commencement of the accession negotiations, though, associations such as İHD were able to affect European policy makers. İHD and Mazlum-Der would actively send representatives of their associations to participate in meetings and conferences within member states of the European Union, as well as in the European Parliament. Sometimes these visits were and are supported financially and organizationally by Kurdish diaspora organizations, who serve as brokers to establish and maintain contacts (Casier 2010). The European Commission and Parliament also sent several delegations to Turkey, and in particular, to the southeastern provinces, to assess the human rights situation, where they made many visits to the local branches of İHD, TİHV and Mazlum-Der. Through these contacts these associations were able to engage in public criticism of the Turkish state and the Turkish government and call for the need to democratize the country.
- 45 Today the traditional human rights associations can still count on a moderate level of support from the European Commission, for example through the financial support provided to the Human Rights Platform, İHOP. The İHOP organizations share the idea that the Turkish state and its political system need to democratize in order to be able to guarantee respect for human rights, and are thus politically engaged insofar as they address the root causes of violations, and not just its symptoms. Although traditional human rights associations are still exchanging information with the European Commission's delegation to Ankara, it does seem that the importance given to the information that is being provided is decreasing.³¹ Finally, recent efforts by state prosecutors to purge civil society organizations and the DTP of suspected PKK activists has also affected associations such as İHD.

Conclusion: Ongoing contestation over the ability to speak the 'truth' over Turkey's respect for human rights

- 46 This paper has looked at how the current institutionalization of human rights protection in Turkey's state administration challenges the established human rights associations' authority over 'the truth' concerning the human rights situation in the country. Given the accession negotiations, the Turkish government is highly motivated to uphold a positive image of its reforms and has, moreover, been pressured to engage more substantially with its civil society actors. However, the institutionalization of human rights has been achieved in such a way

as to lend the state institutions the image of thorough cooperation with a wide range of civil society actors, while in reality excluding actors that threaten the state's reproduction of itself. The lower levels of the new institutional structure, the local and provincial boards, have been shown to consist primarily of organizations and associations that work for and within the confines of the Turkish state ideology and its practices that have been repudiated by the established human rights associations. Furthermore, not only have these associations been excluded from the institutionalization process but they are suffering a decreasing credibility in the eyes of EU officials, who have come to rely increasingly on alternative resources and, moreover, who criticized human rights defenders for being engaged in politics and obstructing Turkey's membership.

- 47 The institutionalization of human rights protection appears to be repackaging human rights within the ideological framework of the Turkish Republic, with the development of a state-friendly human rights sector operating in the context of ongoing EU accession negotiations. Thus, in spite of negotiations and the consequent capacity-building in Turkey for the protection of human rights, the last decade has seen the coming into existence of alternative institutions that threaten the existing ones and have partially silenced their voices.
- 48 Notwithstanding this critique, however, there is also an ongoing negotiation at play between the established human rights associations and the governmental bodies as the human rights associations have, over the years, created a space for themselves in the socio-political landscape, in particular at the local (municipal) and the international scale, which they have to a certain extent been able to maintain. Compared with the newly established human rights institutions, the traditional associations still possess expertise, inclusion in transnational advocacy networks, and are – though under pressure – consulted and to some extent supported by the same EU institutions that support official human rights institutionalization efforts. Part of the space the established human rights associations have created since the 1980s remains intact, albeit somewhat marginalized.
- 49 Both sides in this emerging dualistic system can be regarded as having gained from the EU – and not just its financial support. Signaling the importance of a broad cooperation with civil society and pressing both the government and the civil society organizations to enter into dialogue, the European Commission, has – ironically perhaps – effectively created a structural opportunity for the human rights associations to criticize the government. Insofar as they have refused to take part in the provincial and local boards and have been left off the Human Rights Advisory Board the associations have taken a position from which they attempt to affect the institutionalization process. Their refusal to be involved in the particular way the institutionalization is developing constitutes a strategy for denying the new institutions the legitimacy that they would gain by incorporating the established human rights associations. This explains why the national offices of the main human rights groups determined not to enter into cooperative relationships with the new governmental bodies even though locally, in the boards, some associations have left it up to the choice of their local branches whether or not to cooperate (Ayse Bilgen, Mazlum-Der vice-president, personal interview, 19 January 2009 and Hüsnü Öndül, İHD representative for İHOP, 20 January 2009, Ankara).
- 50 This strategy appears fruitful. Since the start of the institutionalization process the composition of the boards has been changed – specifically, the heads of the police and the secret services have been excluded from the boards after criticisms from the human rights associations and the INGOs, and the government has not (yet) managed to establish the new Human Rights Council as it is against the will of the established human rights associations. However, these gains have also been small and not sufficient to meet the demands of independence that the traditional human rights associations, backed by the INGOs and the Council of Europe's directives, have been demanding.

- 51 The ways in which the institutionalization process is currently developing – that is, in exclusion of the traditional human rights associations and thus developing towards a separate, state-centric human rights body – risks reinforcing the divide in state-society relations in the area of human rights. The state-led human rights institutionalization, which the EU institutions reckoned would reinforce cooperation between state and societal organizations, might thus, on the contrary, turn out to contribute to their ongoing differences. This is the case even though the process might, at the same time, increase the level of integration of different actors into a separate competing cluster of organizations. With regards to the southeastern branches of an organization such as İHD, non-engagement – which has shown itself still a form of engagement – reconfirms the alignment of the association's relations with the local DTP authorities, engaged in an alternative project of state-building (see Watts, this issue) that is very much based upon an anti-statist discourse. What should be clear, though, is that the current human rights institutionalization process has mutually transformative effects on both state and society. It affects the already existing political dividing lines within Turkey's civil society and between state and society actors, and by doing so complicates the ways in which the discourse on human rights is being appropriated in the contest over speaking the 'truth' over the (dis)respect for human rights in Turkey.

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Ayşe Bilgen, Mazlum-Der vice-president, 19 January 2009, Ankara.

Emir Ali Türkmen, former Secretary-General of İHD, 17 January 2009, Ankara.

Hakan Ataman, Secretary General of the Human Rights Agenda Association, 16 January 2009, Ankara.

Hasan Fendoğlu, President of the Human Rights Presidency, 22 January 2009, Ankara.

Haşim Haşimi, former Refah-MP, former mayor of Cizre and former member of the Parliamentary Commission on Human Rights, 20 September 2007.

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Notes

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2 http://ec.europa.eu/enlargement/enlargement_process/accession_process/criteria/index_en.htm

3 E.g. <http://www.hrw.org/en/news/2004/06/14/turkey-eu-bid-hinges-further-rights-reforms>

4 Actually, the 'Kurdish question' was first named as such as early as 1930 – for a brief review of the history of the concept of the 'Kurdish question' and its internationalization (sic), see Scalbert-Yücel and Le Ray 2007, paras.12ff. The Kurdish question is also referred to in this paper in terms of the 'southeast', i.e. conflating geopolitical and ethnic specifications, and obviously assuming a Turkish national perspective based on a status quo (i.e. not a pan-Kurdish, or Kurdish separatist).

5 E.g. assessments of newspapers that are being closed down and journalists and intellectuals that are being prosecuted (to be found on <http://bianet.org/english/freedom-of-expression/117182-bias-second-quarterly-media-report>) reveal that half of the papers and journalists that are targeted are the ones who have been publicizing extensively on the Kurdish issue. In particular those people who have made explicit references to the speeches of leading figures within the PKK have been subject to investigation and/or prosecution. Amnesty International has been criticizing Turkey of an 'entrenched culture of impunity' (<http://www.amnestyusa.org/document.php?id=ENGEUR440082007&lang=e>), which dates back to the 1980s coup and the consequent war during the 1990s.

6 Politicization refers here to the difficulties of maintaining one's neutrality towards the warring parties when confronted with the domestic context of an ongoing armed conflict. Within several domestic human rights organizations there have been and still are divisions over the question of how to address human rights violations in relation to the conflict between the Turkish state and the PKK. These discussions are all the more difficult as within the boards of a number of organizations there is a continuous pressure to incorporate representatives of a number of political parties (Emir Ali Türkmen, personal interview, 17 January 2009, Ankara) that leads to a politicized discourse of some of the human rights defenders that reflects itself in their reports and media interventions (personal observations). However, civil society organizations in Turkey suffer more generally from being politicized, as many endorse a specific ideological outlook and often do not tolerate the right to existence of alternative ideological perspectives (Çaylak 2008).

7 The (recent) 'war on terrorism' reminds us how easily liberties are rolled back 'in the national interest' during times of conflict, even in the (relatively) liberal West.

8 This largely follows the UN Declaration (in Section I, Articles 2-12), with additions for internal EU procedures (Sections II-V), and (five) subsequent Protocols (1963-66) elaborating on these. (<http://www.hri.org/docs/ECHR50.html>).

9 Türkmen is former İHD secretary-general.

10 It has to be noted that for some organizations, such as Mazlum-Der, as much attention was devoted to the headscarf issue as to the Kurdish issue. In its defense of its position on the headscarf Mazlum-Der received support from İHD (Çaylak 2008).

11 For instance, Mazlum-Der lists three problem areas: religious freedoms, migration and the Kurdish issue (<http://www.Mazlum-Der.org>). TİHV has three branches in Ankara, Istanbul, and Diyarbakır, while almost half of İHD's branches (13 of 29) are in the East and Southeast Region, and only 5 of its 17 Special Reports dating back to 2001 cover events and issues outside of that area (and one of those five investigating the confinement conditions on İmralı Prison of PKK leader Abdullah Öcalan).

12 <http://www.khrp.org/>

13 This is not to decry the role of other NGOs oriented to specific types or aspects of human rights but involved in civil life generally, notably the labor unions and professional associations. Unions recently they have been involved in the government's attempt to tackle the Kurdish question, as has the Union (Federation) of Turkish Bar Associations, *Türkiye Barolar Birliği* (TBB), established in 1938

14 The first, and indeed only substantive point made in the formal decision to open accession negotiations at the December 2004 summit (conveyed in the Presidency Conclusions of the Brussels European Council) retrospectively 'welcomed the decisive progress made by Turkey in its far-reaching reform process' and stated its expectation that Turkey ensure the irreversibility of the political reform process and its full, effective and comprehensive implementation, notably with regard to fundamental freedoms and to full respect of human rights...' (Doc. 16238/1/04 REV 1: para.18).

15 Dilek Kurban is an officer with the democratization program at the Turkish Economic and Social Studies Foundation [*Türkiye Ekonomik ve Sosyal Etüdler Vakfı*, TESEV] and co-author of the organization's recent Roadmap publication, which makes wide-ranging proposals for solving the Kurdish question (Ensaroğlu & Kurban 2008). The TESEV Roadmap's other co-author, Yılmaz Ensaroğlu, Mazlum-Der co-representative on the steering committee of the Human Rights Joint Platform [*İnsan Hakları Ortak Platformu*, İHOP], a human rights umbrella group formed in the mid-90s and also representing/comprising İHD and the local (Turkish) branches of two international organizations, Amnesty International, *Uluslararası Af Örgütü - Türkiye* (UAÖ) and the Helsinki Citizens' Assembly, *Helsinki Yurttaşlar Derneği* (YYD) – <http://www.ihop.org.tr>; <http://www.amnesty.org.tr>; <http://www.hyd.org.tr>.

16 These figures represent about 20% of all the violations determined by the Court during this period (and, indeed, during its 50 year history), the most of any of the 47 countries that have signed up to the European Convention and thus fall under the Court's jurisdiction. Some 10,000 applications remain currently pending (ECHR 2009b: 78). (<http://www.tesev.org.tr>)

17 The İHD website currently lists 23 'murdered executives and members,' ten of the twelve victims with details listed having been members of branches in the southeast. Members of other NGOs, such as the president of the Diyarbakır-based human rights group Society for the Assistance and Support of Families of the Disappeared [with Lost Loved Ones], *Yakınlarını Kaybeden Ailelerle Yardımlaşma ve Dayanışma Derneği* (YAKAYDER) have also faced prosecution.

18 The Human Rights Presidency (department) was established in 2001, and can perhaps best be described as a work in progress. For organizational schema, see <http://www.ihb.gov.tr/teskilat/ihb-organizasyon-semasi.pdf> and http://www.ihb.gov.tr/ENGLISH/organization_table_hrp.xls.

19 For a more extensive overview of the changing conditions of these developments see Çalı, B. (2007).

20 <http://www2.ohchr.org/english/law/parisprinciples.htm>

21 The statement refers to the 2007 report that the stipulation of a minimum 3 human rights associations and maximum 2 state personnel members are included on each board is not met in some provinces.

22 The still incomplete legal process here testifies to the complexity of intra-state relations (i.e. within the judicial system) in the case of indictments under contested legislation, as well as the problem in this context of timely resolution. Initially the charges against Kaboğlu and Oran under 301 were dropped on the determination of the Justice Minister, and the defendants were to be acquitted from the 216 charge. Then the Supreme Court of Appeals 8th Penal Circuit overturned the acquittal decision regarding 216. However, the Chief Prosecutor of the Supreme Court of Appeals intervened and the case went to the Court of Appeal's Plenary Penal Committee, which confirmed the original acquittal decision (in April 2008, four years after the report was made public). However, later that year the 28th Criminal Court of First Instance sent the file to the Justice Ministry for permission to try it under Article 301 following a failed attempt by the accused to have it sent to the Constitutional Court (Önderoğlu 2008a; 2008b).

23 Along with representatives from other groups, like *Türk Kadınlar Birliği* [Turkish Women's Union], *Umut Çocukları Derneği* [Children of Hope], *Diyabetle Yaşam Derneği* [Living with Diabetes] and *Çağdas Yasama Destekleme Derneği* [Foundation for the Advancement of Contemporary Life].

24 www.add.org.tr; <http://turkdunyasihd.org>; www.sehitailerleri.org.tr

25 Originating from the southeastern province of Elazığ, Fendoğlu was previously project director for the state Human Rights in Turkey Reform Implementation Support Project, and has authored various relevant publications such as the recent European Commission sponsored overview, 'Turkey in the [New] Millennium, Human Rights and the EU', with a foreword by PM Erdoğan (Fendoğlu 2007).

26 See a full report, in English (PMHRP 2008)); a short (6-page) untitled statistical listing, in English (Altıntaş 2009: 6); and a fuller (17-page) statistical bulletin, in Turkish (BİHB 2008: 8).

27 The evaluation of these governmental and non-governmental reports' numbers is somewhat complicated by the fact that neither side's reports clearly define 'torture', 'ill treatment' or 'freedom of expression.'

28 A table topped by the police and followed by the courts and government ministries (BİHB 2008: 10).

29 The EIDHR is an instrument of the European delegation to Turkey of the European Commission, also known as the Ankara delegation to the EC. For details about the projects currently receiving funding: http://www.avrupa.info.tr/Files/eidhr/2008_projects_in_Turkey_en.pdf

30 İHD received project funding from EIDHR until 2007 for different projects (on the prevention of torture, the rights of minorities and ethnic groups, anti-mining and the rights of disabled). The total budget of the funded projects amounted to about 300,000 euros, making up for over 80% of the total budgets that were foreseen for these projects. GÖÇ-DER and Mazlum-Der received funding until 2005. For projects on (respectively) human rights education, training and awareness raising and for the support of IDPs see: [http://www.avrupa.info.tr/files/EIDHR_Projects_English\(1\).pdf](http://www.avrupa.info.tr/files/EIDHR_Projects_English(1).pdf)

31 This was emphasized in several interviews by the author with long time human rights defenders, January 2009 in Ankara and in Diyarbakir, in September 2007 and March 2008.

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